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UNCLAS SECTION 01 OF 07 SANTO DOMINGO 003312

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STATE TO EB/IFD/OIA/ATBRYAN AND L/CID/JNICOL
STATE ALSO TO WHA/CAR (MCISAAC)
STATE PASS TO TREASURY FOR LLAMONICA

E.O. 12958: N/A

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SUBJECT: DOMINICAN REPUBLIC: 2004 INVESTMENT DISPUTES AND
EXPROPRIATION CLAIMS REPORT

REF: SECSTATE 78697

1. This cable provides the 2004 Investment Disputes and
Expropriation Claims Report for the Dominican Republic per
reftel.

2. The United States Government is presently aware of 13
claims of U.S. persons that may be outstanding against the
Government of the Dominican Republic (GODR), down from 22
claims a year ago. Though there has been a considerable
effort to resolve the many cases that have languished for
years, the recently negotiated Free Trade Agreement with the
United States has made the resolution of outstanding disputes
a priority for the GODR. A USAID-sponsored consultant has
been working with the GODR to develop a system for evaluating
and resolving claims through the use of bonds. In 1999, Law
104-99 was passed, offering the opportunity for claimants
whose disputes arose on or before August 16, 1996, to
circumvent the traditional method of claim resolution (at the
"Bienes Nacional"), and seek compensation from a specially
appointed Commission, provided the claimants are willing to
accept payment in bonds. Recent legislation has made the
Commission a permanent fixture of the Ministry of Finance and
has opened the opportunity for claimants with cases
post-August 16, 1996, who filed their claims prior to the
August 16 cut-off, to bring their cases before the
Commission. The Embassy raises these expropriation and
investor dispute cases with the GODR on a regular basis, and
all information provided herein was last updated in May 2004.

1. a) Claimant A

b) 1999

c) Eight independent power producers (IPPs), six of
which are U.S.-owned, provide approximately 30 percent of the
Dominican Republic's electricity. In 1999, the IPPs entered
into a "Definitive Agreement" with the GODR under which an
escrow account would be established in order to permit the
capitalization of the State electricity company, s
(Corporacion Dominicana de Electricidad (CDE)) power
generation and distribution facilities. This escrow account
would receive payments from the new distribution companies
that would be used to pay the IPPs for both current invoices
and accumulated arrears. The GODR did not live up to its
commitment to implement this escrow arrangement; CDE failed
to keep its payments current to the IPPs; and the GODR
breached several agreements to make up the shortfall, which
exceeded \$100 million dollars.

In September 2002, the GODR announced that seven of the eight
IPP's had agreed in principle to give up their existing
long-term contracts. To date, the GODR has successfully
renegotiated only one new contract with these IPP's. In
February 2004, the GODR and CDE signed a short-term agreement
with two of the Claimants whereby the GODR agreed to increase
tariff rates, make payments on current invoices and negotiate
accumulated arrears. Although tariff rates were increased
CDE and the GODR have continuously failed to make timely
payments to Claimants A, resulting in cash flow problems and
credit difficulties, and they are presently in default to
Claimants A, and other generating companies in the sector, in
excess of \$400 million dollars. Of additional concern, the
contracts with Claimants A are backed, in part, by
guarantees. Should Claimants A's lenders call those
guarantees, the GODR faces liability of more than \$425
million dollars. The Embassy has made repeated approaches to
high government officials in an effort to resolve this
ongoing problem.

2. a) Claimant B

b) 1998

c) Claimant B purchased land located on the access
road to Santo Domingo's Las Americas Airport. In 1998, the
Public Works Department built the ramp for a highway overpass
on Claimant B's land. Embassy contacted Public Works on
behalf of Claimant B and was informed that Claimant B will be
included in whatever settlement (i.e., cash payment or
relocation) was to be offered to Dominican landowners

affected by this construction. The GODR has yet to authorize funding to settle Claimant B's claim, and it fell too late to be included in the original bond issuance program. A possible GODR initial settlement offer will likely be in the form of bonds. No time has been set for a decision.

13. a) Claimant C

b) 1994 and various

c) In 1996, Claimant C discovered that various components of the GODR had, over time, built facilities (including an airport runway extension) on a parcel of land near the town of Barahona that Claimant C's company had owned since the 1920s. The Embassy raised this case on numerous occasions with senior Dominican officials and facilitated meetings between Claimant C and the GODR. In 1999, Claimant C accepted an offer of settlement in partial payment of the claim of approximately \$1.5 million dollars, which the GODR paid in three equal payments. Efforts by Claimant to recoup the remainder of its claim have been rebuffed by the GODR, which takes the position that the claim has been satisfied in full. The matter is presently in litigation.

14. a) Claimant D

b) 1994

c) Claimant D performed construction and asphalt paving services for the Dominican Department of Public Works at the Maria Montez International Airport, as well as other asphalt paving services in other locations in Barahona Province. At the time the work was completed (1996), the Dominican Department of Public Works owed Claimant D approximately \$2 million dollars.

The Embassy facilitated meetings between Claimant D and the Secretariats of Public Works and Finance in December 1998.

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At that time, Claimant was informed that the GODR was considering the issuance of bonds to cover such public-works debts. Claimant D was not satisfied with this response and initiated legal action against the GODR in the U.S. District Court for Puerto Rico; however the action was dismissed for lack of standing in July 2000. In January 2000, Claimant D applied for bonds under Law No. 104-99, which was designed to liquidate a variety of claims inherited from previous governments. In July 2000, Claimant D was awarded government bonds equal to about \$1 million dollars. According to representatives of the GODR, the claim has been fully satisfied. This case has been concluded.

15. a) Claimant E

b) 1992

c) Claimant E owned land bordering the road to the Santo Domingo airport, which was expropriated by the GODR in 1992 for highway expansion. The Embassy repeatedly contacted GODR officials urging resolution of this case. On January 31, 2003, the case was settled with bonds provided under Law No. 104-99, with claimant receiving 2,051,724 pesos in bonds at today's rate of exchange the equivalent of just over \$45,593. In January 2004, Claimant E notified the Embassy that the GODR had been eight months behind on its scheduled payments. According to Claimant E, the GODR had also been paying every six months instead of every three months as agreed in the settlement. The Embassy requested the GODR to look into the matter and payments have resumed. This case has been concluded.

16. a) Claimant F

b) 1992

c) In 1992, Claimants F purchased 20,000 square meters of land near Santo Domingo, valued at \$40,000. Six months after Claimants F occupied the land and planted crops, the GODR's Agrarian Institute (IAD) cut down the fence and permitted Dominican peasants to occupy the land.

Claimants F reported they held legal title to the land, and provided the Embassy with copies of documents supporting their claim. The IAD maintained that since the original owner was prevented by Dominican law from selling this parcel of "agrarian reform land," their land seizure was legal. According to Claimants F, IAD officials have admitted that they made a mistake when they cut the fences and permitted the occupation of the land.

The Embassy raised this case repeatedly with IAD and GODR officials, and as a result, police removed some squatters from the property. Others remained however, and continue to occupy part of the property. In January 2000, Claimants F applied for bonds under Law No. 104-99, and received a

settlement from the Commission for 3 million pesos (\$66,670).
This case has been concluded.

17. a) Claimant G

b) 1991

c) In 1988, the GODR asked Claimant G to build 1,000 homes for sugar cane workers. Claimant G never signed a contract with the GODR. Materials were shipped to the Dominican Republic for the first phase of construction (30 homes) and Claimant G had invoices showing that the materials arrived. In 1989, Claimant G was informed that, due to heavy rains and a bad crop, construction of the homes would be delayed. Claimant G arranged with port authorities to have the materials remain in the port until construction could begin. In 1991, Claimant G discovered that all of the materials had disappeared. Claimant G alleged that some of the materials were auctioned off, and some given to GODR entities. Claimant G estimates losses at \$1.3 million. Claimant G's case was disqualified under Law No. 104-99. Claimant G has since initiated legal action in a Dominican court.

18. a) Claimant H

b) 1991

c) In 1991, the GODR's Agrarian Institute (IAD) expropriated approximately seven hectares of land in Esperanza belonging to Claimant H's mother. Claimant H claimed to have obtained several Dominican court orders requiring the peasant squatters who occupied the land to leave, but these orders were not enforced.

In September 1997, the IAD made a settlement offer, which Claimant H refused. Claimant H requested Embassy assistance in negotiating a better offer from the GODR, which in Claimant H's view, should include not only payment for the land, but also payment for lost economic use of the land. The Embassy repeatedly explained to Claimant that it could not negotiate on behalf of U.S. claimants. The IAD maintained that, having forwarded its offer of compensation to higher authorities, it had no further role to play. In January 2000, Claimant H applied for bonds under Law No. 104-99.

In January 2003, the GODR's bond Commission concluded their evaluation of Claimant H's case, and offered a settlement of 413,160 pesos or roughly \$9,181 dollars. Claimant H refused this offer and was seeking approximately ten times this amount. Dominican officials advised Claimant H to withdraw his claim from consideration under the Ministry of Finance's bond program, and pursue it through the "Bienes Nacionales," the organization normally charged with the resolution of expropriation cases. Embassy has been advised that a settlement in Claimant H's matter has been reached but that payments have not begun. This case has been concluded.

19. a) Claimant I

b) 1990

c) In 1989, Claimant I purchased a 75 percent interest in beachfront property near Barahona. Claimant I's Dominican partners owned the remaining 25 percent. Claimant I's interest in the land had an estimated value of \$112,000.

On September 18, 1989, the GODR seized the land, stating that it intended to use it for the construction of a power plant. Following this action, Claimant I entered into a new agreement with its Dominican partners, under which Claimant I would cease payments on the land and would reduce its interest in the property to 15 percent. It was agreed, "legal actions would be undertaken jointly, the proceeds of which would be distributed between the co-owners in the same proportion as their interest in the property."

Claimant I and its Dominican partners have sought compensation in Dominican courts, and reported to the Embassy in 1994 that the courts had ruled in their favor. No compensation was received so in January 2000, Claimant I applied for bonds under Law No. 104-99. The Embassy was advised in 2003 that the GODR was reevaluating the matter. No time has been set for a decision.

10. a) Claimant J

b) 1990

c) In 1989, Claimant J, and a number of U.S. and Dominican partners, signed a 20-year lease with the GODR's State Sugar Council for the use of some 200 acres of farmland at a site known as La Esperanza in the Northwestern Dominican Republic. Claimant J claimed to have started significantly improving the land when, in 1990, the GODR took control and

turned it over to peasant squatters. Claimant J sought compensation from the GODR for damages suffered as a result of that seizure.

In July 1992, the government of President Balaguer reportedly accepted Claimant J's claim of 4.1 million pesos (then \$303,000). Claimant J received approximately 2 million pesos as part of this settlement offer from the GODR, but continued to seek payment for the outstanding 2.1 million pesos (presently approximately \$44,450). The Embassy repeatedly raised this case with senior GODR officials, and in April 2003, the GODR awarded Claimant J bonds to cover the outstanding \$2.1 million peso debt balance, redeemable in 2005. This case has been concluded.

11. a) Claimant K

b) 1983

c) Claimant K is the owner of land with an assessed value of approximately \$1 million in the Puerto Plata area of the Dominican Republic. In 1983, the GODR seized the land, which is now part of the "Isabel de Torres Scientific Preserve." Claimant K sought compensation, but none was approved.

According to Claimant K, the GODR previously valued the land at \$330,000. Claimant K reported that it has an assessment valuing the land at approximately \$990,000. Claimant K is willing to negotiate. The Embassy raised this matter in all discussions of investment disputes with the GODR. To date there has been no resolution, and the matter continues to experience payment opposition on behalf of Claimant K.

12. a) Claimant L

b) 1972

c) Claimant L's family invested in land just east of Santo Domingo with the intent of building a hotel. The GODR seized the land to help create what is today a public park. Claimant L had documents verifying the GODR debt to the family. Embassy is not aware of any official estimate of value, but has been advised that a settlement has been reached and payment received. This case has been concluded.

13. a) Claimant M

b) 1980's

c) The GODR expropriated Claimant M's property in the 1980's, which Claimant M valued at several million dollars. The Embassy continues to include the matter in all discussions of investment disputes with the GODR. To date there has been no resolution.

14. a) Claimant N

b) 1986

c) Pursuant to a presidential decree in 1986, the GODR expropriated 823,495.70 square meters of land belonging to Claimant N for use in the construction of the Maria Montez Airport in Barahona. Claimant N has sought compensation for the land, improvements to the land, crops located thereon, and for three million cubic meters of raw materials extracted from the land. The claim was brought to the attention of the Embassy in May 2001, and has been included in all discussion of investment disputes with the GODR since that time. To date there has been no resolution. The matter continues to be considered for settlement.

15. a) Claimant O

b) 1998

c) Claimant's land was expropriated in 1998 to permit highway expansion on the road from Santo Domingo to Bavaro. The matter was initially presented to the Commission for possible resolution with bonds, however the Commission lacked the legal authority to offer settlement, as the expropriation occurred after August 16, 1996. Claimant O requested the case be withdrawn from consideration without prejudice. The initial settlement offer was for 15,540,000 pesos (approximately \$345,333.)

16. a) Claimant P

b) 1994

c) Government expropriation occurred in Moncion by INDRHI ("Instituto Nacional de Recursos Hydroelectricos") for purposes of dam construction. Parties initially resolved the dispute by contract, agreeing to compensation in the amount

of 1,053,971 pesos. GODR assigned this matter to INDRHI for resolution and that agency has handled all payments to date. This case has been concluded.

17. a) Claimant Q

b) 1992

c) Claimant Q's land was expropriated in Santo Domingo to permit highway expansion. Claimant Q signed a settlement contract with the GODR in 1999, but was not paid. Claimant received bonds for payment in 2003 in the amount of 141,840 pesos (approximately \$3,152.) and the case has been concluded.

18. a) Claimant R

b) 1971

c) Claimant R sold land in Santo Domingo to the GODR in 1971. Terms of the contract provided for partial payment at the time of sale, and final payment shortly thereafter. Claimant R received the initial payment, but never the final payment. The outstanding amount is 22,696 pesos (approximately \$504). Claimant is not interested in bonds, and has requested removal from consideration by the Commission. Embassy has been advised that payment has been approved but not yet disbursed. This case has been concluded.

19. a) Claimant S

b) 1998

c) Claimant S signed a contract with the GODR in 1999 to receive compensation for expropriated property. The contract was silent regarding specific terms or timing of payments, and Claimant S was never paid. The total amount owed to Claimant S was 948,087 pesos (approximately \$21,070). Embassy has been advised that payment has been made. This case has been concluded.

20. a) Claimant T

b) 1998

c) Claimant T's land was expropriated in 1998 for highway expansion in Santo Domingo. The claim is for 15,342,840 pesos (approximately \$340,950), but as it arose after August 16, 1996, Claimant T was not eligible for the bond program under Law 104-99.

21. a) Claimant U

b) 1987

c) Claimant U's contract claim involves the unpaid commission for loan guarantees on a real estate transaction brokered in 1976. Claimant U asserts he is entitled to 2% of 12 million dollars, the loan guarantee amount. Claimant has a default judgment from the U.S. Court of Appeals for the Ninth Circuit, entered in 1987, for \$240,000. Claimant U asserts that with interest, the claim is now valued at approximately two million dollars. Embassy has raised this issue with GODR officials and facilitated a meeting between Claimant U and GODR officials, and the parties are presently in discussion.

22. a) Claimant V

b) 1995 and various

c) Claim involves non-payment for the major repair of a power plant located in Haina, which began in March 1993. After a number of delays, the unit was operational in April 1994, and final invoices from 1995 indicate \$1,956,858, and 8,878,485 pesos owed for goods and services rendered. At a 1997 meeting between the parties, Claimant V asserted that the GODR acknowledged interest on the debt of 8,380,624 pesos.

Embassy repeatedly contacted GODR officials in regard to this claim. On April 30, 2003, Claimant V was presented with a settlement check, for cash, in the amount of 19,250,000 pesos (approximately \$427,780). GODR officials have stated that the money represents final settlement of Claimant V's claim. This case has been concluded.

23. a) Claimant W (NEW)

b) 2003

c) In 1998 Claimant W and family responded to advertisements by the Dominican Republic seeking U.S. investment by purchasing two adjacent parcels of land located in Cumayasa, San Pedro de Macoris. In March of 2003 Claimant W, while visiting his property, discovered that almost 700 mature coconut trees had been bulldozed and other

property destroyed by the Dominican Consejo Estatal de Azucar (CEA). When Claimant W contacted the CEA office in Santo Domingo to request an immediate evacuation of the area a CEA engineer recommended that Claimant W instead request that the properties be replaced with other unspecified parcels in unspecified areas, citing the CEA had incurred expenses in grading the land and uprooting the fruit trees.

Claimant W immediately contacted a local attorney and initiated legal action in a Dominican Court. The Embassy contacted GODR officials in regard to this claim. The matter is currently pending a judicial decision.

24. a) Claimant X (NEW)

b) 1992

c) In 1991 as an insurer to an international company with a contract to provide the sale of power station spare parts for the Dominican Corporacion Dominicana de Electricidad (CDE), Claimant X paid approximately \$2,829,112.63 to the insured and accepted transfer of all rights to settlement in the dispute with the Dominican government. On May 12, 1992 an Italian court ruled in favor of Claimant X and ordered the payment of approximately \$5,369,781 (original sum plus accrued interest and expenses) by the CDE/GODR. In early 2003, GODR officials sought to retain a law firm in the United States to negotiate a final settlement with Claimant X. The retainer was never completed. On May 27, the Ministry of Finance,s Legal Department issued its opinion on the issue and it is expected that negotiations will begin on a final settlement within the next few months.

The Embassy had been in repeated contact with GODR officials in regard to this claim and brought it to the specific attention of the Ministry of Finance at every available opportunity. Claimant X will continue to engage GODR officials through their local attorney. The estimated amount owed by the GODR is now approximately \$10 million.

3. The list of claimant names follows, all of whom are believed to be either U.S. citizens or companies with significant U.S. citizen investment. No privacy act waivers have been signed by these claimants.

Claimant A:	Smith-Enron CLP, AES Dominican Power Partners,
	Coastal Corporation, Seaboard Corporation,
	Maxon Engineering Services Inc., and Cogentrix Corporation
Claimant B:	Boyd Hernandez Collazo
Claimant C:	Hunt Marckwald, Habanero Land Company
Claimant D:	Betterroads Asphalt
Claimant E:	Carlos Langa
Claimant F:	Daniel and Lorrie Taveras
Claimant G:	Warner Chilcott
Claimant H:	Juan Dominguez
Claimant I:	Ronald Blisset, Blisset Enterprises
Claimant J:	Craig Frederickson
Claimant K:	Luis M. Bordas and Neyda Lopez Bordas
Claimant L:	Andrew Abdo and Family
Claimant M:	Mercedes Colwin
Claimant N:	Miguel Angel Fuentes Vasallo
Claimant O:	Inmobiliaria ANATOLE, S.A.
Claimant P:	Successors of Martin Gomez
Claimant Q:	Silvio Eusebio Diaz Infante
Claimant R:	Successors of Ricardo Molinari Diaz
Claimant S:	Sergio M. Francisco
Claimant T:	Matia de los Angeles Barcelo Salas
Claimant U:	Charles V. Meadows
Claimant V:	Besco Inc.
Claimant W:	Dante Llacuna
Claimant X:	New Hampshire Insurance Company

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